

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-CV-126-FL

ELWYN J. COLE and EJC FAMILY)
PARTNERSHIP, LTD,)

Plaintiffs,)

v.)

MOUNIB AOUN, GHADA C. AOUN,)
AJJS, LLC, and ATLANTIC CREDIT,)
INC.,)

Defendants.)

ORDER

This matter is before the court on plaintiffs' motion for voluntary dismissal under Federal Rule of Procedure 41(a)(2). (DE 35). Defendants failed to respond to the instant motion, and the time for doing so has elapsed. This matter is ripe for ruling.

Federal Rule of Civil Procedure 41(a)(1) allows a plaintiff to dismiss an action voluntarily before the opposing party files an answer or summary judgment motion or by stipulation of the parties. Fed. R. Civ. P. 41(a)(1)(A). Otherwise an action shall not be dismissed on the plaintiff's request except upon an order of the court, "on terms that the court considers proper." See Fed. R. Civ. P. 41(a)(2). "The purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced." Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987).

Here, after receiving notice that the parties settled all matters in controversy among them, the court dismissed the instant action on August 22, 2019, subject to the right of any party to file a motion to reopen the case should settlement not be consummated within 45 days. The court

further directed the parties to file their stipulation of dismissal with prejudice on or before October 6, 2019.

The parties failed to comply with the court's order. On October 10, 2019, plaintiffs filed a joint notice, indicating the parties would file a stipulation of dismissal within the next two weeks. On October 18, 2019, plaintiffs filed the instant motion for dismissal with prejudice as to all defendants. Where defendants have not objected to the motion, the court finds good cause to allow plaintiffs to voluntarily dismiss the instant action with prejudice as to all defendants.

Based on the foregoing, the court GRANTS plaintiffs' motion for voluntary dismissal (DE 35), and the matter is DISMISSED with prejudice. The clerk of court is DIRECTED to close this case.

SO ORDERED, this the 15th day of November, 2019.



LOUISE W. FLANAGAN
United States District Judge